

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB563

Hearing Date: Monday March 02, 2009
Committee On: Business and Labor
Introducer: Lathrop
One Liner: Adopt the Contractor Employee Classification Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Carlson, Council, Lathrop, McGill, Schilz, Wallman, White
Nay:
Absent:
Present Not Voting:

Proponents:
Senator Steve Lathrop
Jim Steele
Ken Maas

Representing:
Introducer
self
AFL-CIO

Opponents:
Bruce Kevil
James Overcash

Richard Reiser
Jack Peetz
Larry Johnson
Tim Keigher

Representing:
NE State Homebuilders Assoc.
Assoc. of General Contractors, Electrical Contractors
Assoc, Mechanical Contractors Assoc. of Omaha
self
NE Trucking Assoc.
NE Trucking Assoc.
NE Petroleum Marketers and Convenience Store
Assoc.

Neutral:
Ron Sedlacek

Representing:
NE Chamber of Commerce

Summary of purpose and/or changes:

Creates the Contractor Employee Classification Act to address the problem of misclassifying employees as independent contractors. LB 563 creates a cause of action for the misclassified employee, the Department of Labor and the Department of Revenue against the offending contractor. LB 563 directs contractors to post at job sites, the rights enumerated under the act. LB 563 further prohibits retaliation against an employee from exercising any right granted under the act

Section 1 creates the Contractor Employee Classification Act.

Section 2 defines contractor, interested party and performing services for purposes of the act.

Section 3 presumes an individual is an employee unless certain criteria are met: (1) the individual is free from control or direction, (2) the individual is engaged in a independently established business, (3) the individual's service is available to

the general public, (4) the individual furnishes his/her own tools and (5) the contractor does not represent that the individual is an employee. The individual is presumed to be an independent contractor if he/she is registered pursuant to the Contractor Registration Act, has been assigned a combined tax rate and is listed on the Department of Revenue's database under Neb. Rev. Stat. 77-2753.

Section 4 declares that not properly classifying a worker is a violation of the act.

Section 5 provides an interested party a cause of action to recover that amount of taxes that would have been paid or withheld, the difference in compensation between what was actually paid and the average wage for like work and attorney's fee and costs.

Section 6 prohibits a contractor from retaliating against an employee for exercising any right granted under the act. Defines rights.

Section 7 requires contractors to post at job sites, the rights and obligations enumerated in the act. The notice directs an employee to contact an attorney, the Department of Labor or the Department of Revenue if it is believed that misclassification is occurring.

Section 8 the act does not affect or apply to tort recovery, or affect the common-law interpretation of independent contractor status or affect a workers' compensation claim.

Explanation of amendments:

The committee amendment replaces the bill. The act only applies to contractors in the construction and delivery service industries. The amendment does not create a new test for independent contractor, but rather, uses the test used for unemployment security law purposes (section 43-604 (5)). The cause of action is removed and replaced with civil penalties. The department of labor is to share information with the department of revenue and prosecuting authorities.

Section 1: creates the Employee Classification Act.

Section 2: defines commissioner, contractor, delivery service and department for purposes of the act.

Section 3: presumes an individual is an employee unless the individual meets the independent contractor criteria in section 48-604 (5), the individual is registered pursuant to the Contractor Registration Act, is assigned a combined tax rate pursuant to section 48-649 (4) or is exempt from unemployment insurance coverage under section 48-604 (6). An individual in the delivery service industry is presumed an employee unless exempt from unemployment insurance coverage under section 48-604 (6) (n) and (6) (q). The act does not affect or apply to tort recovery, or affect the common-law interpretation of independent contractor status or affect a workers' compensation claim.

Section 4: declares that not properly classifying a worker is a violation of the act.

Section 5: directs the department of labor to establish and operate a hotline and website for the reporting of suspected violations.

Section 6: directs the department to timely investigate credible reports.

Section 7: any violations of the act amount to a \$500 fine per misclassified employee for a first offense and \$5,000 fine for per misclassified employee for second and subsequent offenses.

Section 8: directs the commissioner to collect unpaid combined taxes and interest and to share findings with the department of revenue for investigation under the Nebraska Revenue Act. Findings are to be referred to the appropriate prosecuting authority.

Section 9: directs the department to provide the legislature with a report of its findings.

Section 10: requires contractors to post at job sites, the rights and obligations enumerated in the act. The notice directs an employee to contact the department if it is believed that misclassification is occurring.

Section 11: requires public construction contractors to submit an affidavit attesting that each individual is properly classified, that an I-9 form has been completed for each individual and that the contractor has complied with e-verify.

Section 12: any contractor who knowingly provides a false affidavit shall be subject to penalties of perjury and upon a second or subsequent violation may not contract with the state or any political subdivision for three years.

Section 12: allows the commissioner to use monies in the Employment Security Special Contingent Fund to assist the department with enforcement of the act.

Steve Lathrop, Chairperson